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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1977

No. 77-1337

UNIVERSITY OF NEVADA, and the STATE OF NEVADA,
Petitioners,

VS.

JOHN MICHAEL HALL, Minor by and Through His
Guardian Ad Litem John C. Hall and
PATRICIA HALL,
Respondents.

On Writ of Certiorari to the Court of Appeal of California,
First Appellate District, Division Four

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

OPINION BELOW

The Writ is addressed only to the California Court of Appeal, First Appellate District, Division Four to review the opinion of that Court. The opinion is set forth in full in the Petitioners' Appendix to their Petition for Certiorari.

PETITIONERS' CLAIM OF JURISDICTION

The only basis for jurisdiction of this Court claimed by the petitioners is 28 U.S.C. 1257(3) (page 2 of Brief). No other ground for invoking this Court's jurisdiction is given. A reading of the opinions of the California Courts and the previous Petition for Writ of Certiorari filed with this Court in 1973 demonstrates that:

- (1) The validity of a treaty or statute of the United States is not drawn in question.
- (2) No State statute is drawn in question on the ground of it being repugnant to the Constitution treaties or laws of the United States.
- (3) No "title, right, privilege or immunity is specially set up or claimed under the Constitution, or statutes of the United States". Such a claim can only be made by citizens of the United States. The judgment against the Estate of the employee of the University of Nevada was not appealed.

STATUTORY PROVISIONS INVOLVED

Vehicle Code of State of California, Sections 17450 et seq.

Nevada Revised Statutes, 13.025.

QUESTIONS PRESENTED FOR REVIEW

1. Should this Court abolish the long standing rule of law that the Supreme Sovereign Power of a State is restricted to its territorial boundaries?

2. Should this Court extend the Sovereign Power of the State of Nevada into the territorial boundaries of the State of California and disregard the Supreme Power of Sovereignty held by the State of California within its own boundaries?

3. Should this Court disregard the principle that the State of California as Sovereign is *parens patriae* to its citizens and acts as guardian and trustee of its citizens and must protect its citizens from injuries and damages inflicted upon them by motor vehicles operated on its streets and highways?

4. Can any immunity be asserted by Nevada when no sovereign power exists?

5. The waiver of immunity in open Court by the Deputy Attorney General of the State of Nevada.

6. The acquisition of jurisdiction over the State of Nevada through the long arm statute of the State of California and through personal service of the agent of the State of Nevada in California.

7. Full faith and credit clause does not require California to apply Nevada's statutory limitation on monetary damages.

8. Full faith and credit clause requires Nevada to apply California law regarding wrongful, illegal and tortious conduct of their employee.

STATEMENT OF THE CASE

On May 13, 1968, the plaintiffs John Michael Hall, a minor child, and his mother were in an automobile

on a California highway in Placer County. The driver of the other vehicle involved in the collision drove across the dividing strip and collided head-on with the plaintiffs' vehicle. John Michael Hall, a minor child, sustained severe head injuries resulting in permanent brain injuries which have left him severely retarded and unable to care for himself or to ever be able to earn a livelihood. His mother, Patricia Hall, sustained severe physical injuries and severe emotional injuries requiring the care and treatment of psychiatrists.

The driver of the automobile which struck the plaintiffs' car violated the laws of the State of California which prohibit driving across a dividing strip and driving the wrong way on a divided highway. The conduct of the driver was both tortious and criminal in nature.

The driver of the automobile which struck the plaintiffs' car was an employee of the University of Nevada and was, at the time of the accident, returning to Nevada after having picked up some television parts.

The automobile which caused these injuries was a chattel owned by the State of Nevada and this chattel was voluntarily brought into the State of California by an employee of the University of Nevada. The driver of the automobile owned by the State of Nevada was killed in the accident. An estate proceeding was commenced for the deceased employee in the State of California and an Administrator of the Estate, a

resident of California, was appointed in the State of California. The plaintiffs filed suit against the Administrator of the estate of the deceased employee, the University of Nevada and the State of Nevada. Service of process on the State of Nevada and the University was accomplished under the long arm provision of the Motor Vehicle Code of the State of California (California Vehicle Code Sections 17450 et seq.).

Service of process on the Administrator was by personal service of the Summons and Complaint in California. The Supreme Court of the State of California in *Hall v. University of Nevada*, 8 Cal. 3d 522, 503 P.2d 1363, 105 Cal. Rptr. 355 (1972) cert. denied 414 U.S. 820 (1973) denied the motion to quash service filed by the defendants State of Nevada and University of Nevada. No such motion was made on behalf of the employee.

The State of Nevada also filed a Motion for Leave to File Complaint with the Supreme Court of the United States which was also denied by this Court.

A trial of the action took place in Alameda County and at the trial of the action the petitioners herein moved for an Order restricting the amount of damages to Twenty-five Thousand Dollars (\$25,000.00) and for an instruction to the jury that they could only award Twenty-five Thousand Dollars (\$25,000.00) per person. Both requests were claimed to be based on Article IV, Section 1 of the United States Constitution and were denied by the Trial Court.

At the time the above motions were made Michael Dyer, Deputy Attorney General of the State of Nevada, in open court waived any immunity to suit in California and consented to the jurisdiction of the California Court.

At page 10 of the Reporter's Transcript, lines 13 through 18:

"The Court: Any response Mr. Dyer?

Mr. Dyer: Your Honor, just simple statement. The whole issue is not whether Nevada is immune from suit. We admit that we are susceptible to suit in California. The question is whether full faith and credit must be given to our limitation."

The opinion of the Court of Appeal of the State of California, filed on October 24, 1977 (at page 3 of opinion) states:

"Appellants' motion to limit damages was denied by the trial Court. The correction of this ruling is the sole issue on appeal."

At the time of oral argument before the Court of Appeal Mr. Dyer again agreed that the State of Nevada Court had obtained jurisdiction over the State of Nevada.

The verdict of the jury was against the petitioners herein and the Administrator of the estate of the deceased employee of the University of Nevada. The petitioners herein admitted that the deceased employee was in the course and scope of his employment at the time the accident occurred and are not disputing that their employee was negligent and that his negligence was a proximate cause of the injuries sus-

tained by the respondents herein. However, no appeal was filed on behalf of the deceased employee and the judgment is now final, nor is any claim made that the Courts of the State of California did not acquire jurisdiction over said employee by service of process in the State of California on the Administrator of the estate of the deceased employee.

Petitioners filed a Petition for Hearing before the Supreme Court of the State of California which was denied. Petitioners then filed a Petition for Writ of Certiorari which was granted by this Court.

SUMMARY OF ARGUMENT

Petitioners present an argument which does not attempt to precisely define the real issues presented to this Court. The basic questions presented are the nature and extent of the sovereign power of a State—not whether it can be sued without its consent. Petitioners contend that sovereign immunity is an attribute of sovereignty and yet make no attempt to support their contention that the State of Nevada is somehow blessed with a species of extraterritorial sovereignty that is greater than that of the other States of this Union.

Petitioners fail to discuss the factual situation presented by this case of first impression. The discussion regarding the Tenth and Eleventh Amendments to the United States Constitution, while of historical interest, do not really assist the Court in making a judicial determination of the legal and factual issues involved.

This case involves tortious, wrongful and criminal acts committed by an operator of a vehicle in the State of California. The vehicle was brought into the State of California voluntarily and was operated by an employee of the University of Nevada. As a result of the wrongful conduct of the employee, serious and permanent brain injuries were sustained by John Michael Hall, a minor child and serious and permanent injuries were sustained by his mother, both residents of the State of California. The State of California has a special interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which the State seeks to deter and against which it attempts to afford protection by providing that they be liable for all damages which are the proximate result of their torts. The State of California as supreme sovereign within its territorial limits is *parens patriae* to its citizens. The State of California is the guardian and trustee of its citizens.

The exercise of the responsibility has repeatedly been recognized by this Court. In upholding the long arm statute regarding nonresident motorists this Court has pointed out that automobiles are dangerous machines the use of which under the police powers of the State may be regulated with a view to the public safety and that a State may even exclude a nonresident from its highways until the formal appointment of a resident agent for the receiving of service of process has been made.

The sovereignty of Nevada cannot be extended into the territorial boundaries of the State of California. This is especially true when the activities of the State of Nevada in the State of California relate to the operation of an automobile on the highways of the State of California and the commission of a wrongful and tortious act by an employee of the University of Nevada while operating an automobile in the State of California. The State of Nevada came into the State of California and used its property (automobile) within this state. Under these circumstances the State of Nevada does not carry with it any of the attributes of sovereignty nor exercise of governmental power.

Nevada can make no valid argument that the delivery of television parts is an essential governmental function which would make its interest paramount to that interest of the State of California in regulating the use of its highways and vehicles on its highways and in protecting the safety and welfare of its citizens.

There is no constitutional grant or protection of any sovereign immunity of a State. The Eleventh Amendment is a restraint on the Federal judiciary and the Tenth Amendment merely states that powers not granted to the Federal Government are reserved by the States.

If one assumes that Nevada, under these facts, enjoys some sort of immunity from suit the question of a waiver of that immunity becomes important. The Court will readily see by reference to the Reporter's

Transcript of the proceedings in the Superior Court of Alameda County that the Deputy Attorney General of the State of Nevada waived any claim of immunity from suit in the Courts of California. A State may waive its immunity from suit or consent to be sued in other ways than by a formal declaration of consent in its constitution or statutes. The State of Nevada also waived any immunity it may claim to have by consenting to be sued and appointing the Director of Motor Vehicles of the State of California as their true and lawful attorney upon whom process could be served.

Petitioners also fail to mention in their brief that their agent and employee was served in the State of California by summons and complaint being served upon his administrator. Since the employee died in the State of California the administration of his estate was commenced in California. The State of Nevada can make no valid argument to the effect that the California Courts acquired jurisdiction over their agent and employee. The verdict of the jury was returned against both the employer, University of Nevada, and its employee. No appeal was ever filed on behalf of the employee and the judgment against the employee is now final. No writ is sought with this Court with reference to the judgment against the employee.

Petitioners assert that California Courts must give full faith and credit to the laws of the State of Nevada. This claim is without merit.

This Court has clearly established the legal principle that the Full Faith and Credit Clause does not enable the State of Nevada to legislate for the State of California and the Full Faith and Credit Clause does not enable Nevada to project its laws across state lines so as to preclude California from prescribing the legal consequences of acts committed within its territorial boundaries.

The accident in this case occurred in the State of California. The injured persons were residents of the State of California. The accident involved violations of the California Vehicle Code. The estate of the tortfeasor was commenced in California. The laws of the Sovereign State of California applied exclusively. The State of Nevada's laws have no application to this wrongful act.

Since each of the States of the Union has constitutional authority to make its own laws with respect to events within its borders the Full Faith and Credit Clause does not require it to substitute for its own law the conflicting law of another state, even though that law is controlling force in the Courts of that State with respect to the same persons and events.

Petitioner asserts that if the source of the obligation is the foreign law the defendant is entitled to the benefit of whatever condition and limitations the foreign law creates. The source of the obligation in this case is not the Nevada law. Respondents contend that the California law is the "source of the obligation" and not Nevada law. The wrongful and tortious conduct took place within the territorial

boundaries of the Sovereign State of California and the nature and extent of the liability for such wrongful conduct is governed by California statutes.

ARGUMENT AND CITATION OF AUTHORITY

I

SCOPE AND EXTENT OF NEVADA'S SOVEREIGN POWER

A state is a political community of free citizens, occupying a territory of defined boundaries. *Coyle v. Smith*, 221 U.S. 559, 55 L. Ed. 853, 31 S. Ct. 688; *Texas v. White*, 7 Wall. (U.S.) 700.

The state is supreme only within its territorial limits. *Parker v. Brown*, 317 U.S. 341, 87 L. Ed. 315, 63 S. Ct. 307.

Conversely the sovereign powers of a state do not extend beyond its boundaries. *State v. Hudson*, 231 Minn. 127, 42 N.W. 2d 546; 72 American Jurisprudence 2nd, p. 409 "States" § 4 Power as Territorially Limited.

The territorial limitation of the sovereign power of a state is illustrated by the lack of power of a state to project its laws across state lines so as to preclude another state from prescribing for itself the legal consequences of acts within it. *Pacific Employers Insurance Company v. Industrial Accident Commissioner*, 306 U.S. 493.

II

SCOPE AND EXTENT OF CALIFORNIA'S SOVEREIGN POWER

The sovereign power of the State of California, within its territorial limits, is supreme. The State of California as sovereign stands in the position of parens patriae, *Kentucky v. Indiana*, 281 U.S. 163, 74 L. Ed. 784, 50 S. Ct. 275; *New York Life Insurance Company v. Bangs*, 103 U.S. 435, 26 L. Ed. 580, that is guardian and trustee of its citizens; *Hudson County Water Company v. McCarter*, 209 U.S. 349, 52 L. Ed. 828.

The State of California has a special interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort. Witkin, *California Procedure*, Second Edition, Paragraph 6, Section 94 at page 619.

In order to fulfill its obligation as protector of its citizens from tortfeasors using the highways of the State, California enacted long arm statutes providing that the act of a nonresident using the highways constitutes an agreement on the part of the nonresident user to subject himself to the jurisdiction of the California Courts. As pointed out in *Kroll v. Nevada Industrial Corporation*, 65 Nevada 174, 191 P. 2d 889, quoting from *Hess v. Pawloski*, 274 U.S. 352, automobiles are dangerous machines, the use of which

under the police powers of the states may be regulated with a view to the public safety.

Kroll v. Nevada Industrial Corporation, supra, extended the act to the corporate owner as well as to the operator.

The State of California, as sovereign, must have the sovereign power to protect its citizens and this power cannot be abrogated by legislative acts which have no extraterritorial effect. The sovereign power of the State of Nevada concerning tortious acts which severely injure California citizens cannot be used to usurp the power and duty of the State of California to protect the safety and well-being of their citizens.

The sovereign power of the State of California also extends to the power to regulate and enact legislation dealing with the administration of estates of those persons who die in the State of California. The tortfeasor in this case, an employee of the University of Nevada, died in the State of California. The administration of his estate was instituted in accordance with the laws of the State of California and the administrator of his estate, a California resident, was personally served with summons and complaint.

III

IMMUNITY, BEING AN ATTRIBUTE OF SOVEREIGNTY, CANNOT BE ASSERTED WHEN NO SOVEREIGN POWER EXISTS

As pointed out by petitioners in their brief, immunity is an attribute of sovereignty. It is the position of

Respondents that immunity can not exist without the contemporaneous existence of sovereignty. None of the cases cited by Petitioners touch on the particular set of circumstances that exist in this case.

As demonstrated in the previous points of this argument the State of California, with reference to the tortious and wrongful conduct occurring within its territorial limits, possesses the supreme sovereign power. Nevada's position would appear to be that their sovereign power extends beyond their territorial boundaries and is superior to the sovereign power of the State of California with reference to tortious and wrongful conduct occurring on the highways of California. This position is not tenable and is not supported by any citations or legal authority. Historically the sovereign has that capacity only in relation to his own subjects and within his own realm.

IV

THE CONSTITUTION HAS NO PROHIBITION AGAINST SUITS AGAINST NON-CONSENTING STATES

There is absolutely nothing in the original Constitution nor in any of the amendments expressly sanctioning the doctrine of sovereign immunity. The Eleventh Amendment, despite the outcry about sovereign immunity and the sovereignty of states which preceded its adoption, does not constitute an exception. The Eleventh Amendment did impose a limitation upon the Federal Judicial power with respect to suits brought against the states in Federal courts

but did not write into the constitution any doctrine of sovereign immunity.

V

NEVADA, BY APPEARING IN COURT THROUGH ITS DEPUTY ATTORNEY GENERAL AND IN OPEN COURT ADMITTING THAT NEVADA WAS SUSCEPTIBLE TO SUIT IN CALIFORNIA COURTS, HAS WAIVED ANY PURPORTED IMMUNITY TO SUIT IN CALIFORNIA.

A state may waive its immunity from suit or consent to be sued in other ways than by a formal declaration of consent in its constitution or by statute (Volume 49 American Jurisprudence, States. Territories, etc., Section 96, p. 313).

It is also incumbent upon the Petitioners to assert any grounds upon which they are claiming immunity in order to protect their right to assert that defense on appeal.

The waiver of immunity by consenting to the jurisdiction of the California Courts is further evidenced by the fact that the Petitioners stated in their appeal that the sole issue presented was whether the trial judge erred in failing to instruct the jury on the statutory limitation of damages provided for by the Nevada statutes.

As stated by the Deputy Attorney General at page 10 of the Reporter's Transcript, lines 15 through 18:

"The whole issue is not whether Nevada is immune from suit. We admit that we are susceptible to suit in California. The question is whether full faith and credit must be given to our limitations."

VI

LONG ARM STATUTE OF CALIFORNIA CONFERRED JURISDICTION OVER THE STATE OF NEVADA AND PERSONAL JURISDICTION WAS ACQUIRED OVER THEIR AGENT

The constitutionality of the statutes providing for service upon nonresident motorists has been upheld in *Hess v. Pawloski*, 274 U.S. 352, and in Nevada in the case of *Kroll v. Nevada Industrial Corporation*, 65 Nevada 174, 191 P. 2d 889.

In *Kroll v. Nevada Industrial Corporation*, *supra*, the Act was declared to apply to corporations as owners of vehicles as well as the driver. California has interpreted their statute to apply to corporate owners also.

This Court has held that governments are body politics and corporate in nature. *U.S. v. Maurice*, 2 Brock, and in *Morrell v. New York City Department of Social Services*, 38 C.C.H. Bul. B. 2730.

There is no logical reason why a distinction must be made between Nevada as the owner of a vehicle and any other corporation. No valid argument can be made that a State should be exempt from the provisions of a long arm statute of a sister State.

Nevada makes no attempt to refute the fact that personal jurisdiction in the State of California was obtained over their agent. The State of Nevada has admitted that this agent was in the course and scope of his employment. The State of Nevada is liable for the torts of their agents under the doctrine of *Respondeat Superior*. No motion was ever made to quash service of summons on their agent nor did the

State ever appeal the judgment rendered against their employee by the jury.

VII

FULL FAITH AND CREDIT CLAUSE DOES NOT REQUIRE THAT CALIFORNIA APPLY NEVADA'S STATUTE REGARDING LIMITATION ON MONETARY DAMAGES

This Court has already held that the Full Faith and Credit Clause does not enable one State to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts occurring within it. *Pacific Employers Insurance Company v. Industrial Accident Commission*, 306 U.S. 493.

Petitioners cite *Great Northern Insurance Company v. Read*, 322 U.S. 47, *Edelman v. Jordan*, 415 U.S. 651, and *Pearson v. Northeast Airlines, Inc.*, 307 F.2d 131, in support of their argument that the State of California must give full faith and credit to the monetary limitation set forth in the Nevada Statutes.

The *Great Northern Insurance Company v. Read*, *supra*, merely held that a suit filed in the Federal Court against a State was barred by the Eleventh Amendment.

Edelman v. Jordan, *supra*, is again a case dealing with the Eleventh Amendment and is not applicable here.

Petitioners cite *Pearson v. Northeast Airlines, Inc.*, 307 F. 2d 131, as authority for their position that the

Full Faith and Credit Clause requires California courts to give extraterritorial effect to Nevada law.

In the *Pearson* case the plaintiff was seeking recovery under the Massachusetts wrongful death statute in a Federal court. In *Hall v. Nevada*, the plaintiff was seeking damages for injuries as provided for under the California laws. The court in *Hall v. Nevada* determined that Nevada did not have immunity from liability for its activities in California and therefore the extent to which Nevada waived immunity by statute and the extent to which it could or had limited the statutory waiver was immaterial.

Petitioners, at page 26 of their Brief, cite *Slater v. Mexican National R.R. Co.*, 194 U.S. 120, 126 (1904) cited in *Pearson v. Northeast Airlines, Inc.*, *supra*:

"It seems to us unjust to allow a plaintiff to come here absolutely depending on the foreign law for the foundation of his case, and yet to deny the defendant the benefit of whatever limitations on his liability that law would impose."

Plaintiffs in *Hall v. Nevada* are not "absolutely depending on the foreign law for the foundation of his case." The opposite is true. Plaintiffs served defendants under the provisions of California law and relied on the California laws governing the operation of motor vehicles on the California highways. No Nevada statute is relied upon by plaintiffs. The accident happened in California, on California highways, involving residents of California.

Petitioners at page 25 of their brief again refer to a citation from *Pearson*, which cites *Davis v. Mills*, 194 U.S. 451:

"But, as the source of the obligation is the foreign law, the defendant generally speaking is entitled to the benefit of whatever condition and limitations the foreign law creates."

Petitioners' reliance on *Pearson* is misplaced. The Supreme Court of this State held that the Nevada law regarding immunity was not applicable to activities carried on by employees of the State, while operating motor vehicles on the highways of California. The "source of obligation" is not Nevada law, but California law.

CONCLUSION

Petitioners argue that "the decision of the California Court of Appeal would have a devastating effect on the ability of the States to interact" (page 26 of Petitioners' Brief).

This case is restricted to the use of an automobile in the State of California which was operated in a wrongful, illegal and tortious manner. Certainly one cannot argue that the interaction of states is dependent upon wrongful, tortious and illegal activities within a sovereign state. The only requirement to give complete protection would be an endorsement placed on the automobile insurance policy held by the State giving adequate insurance coverage when the State automobile is being operated outside of the

territorial limits of the State. Such insurance coverage would be at minimal cost and would protect the State when their vehicles are being operated outside of their State.

Petitioners refer to "unlocking the treasury doors". The purchase of the additional out of state coverage would not "unlock any treasury doors."

Petitioners refer to the decision of the California court as a "cancer" which will "devour the concept of Federalism."

It is the position of Respondents that this decision will strengthen the union of States and will protect the constitutional rights of citizens of each state to due process of law and that they be afforded a remedy for the tortious activities of persons coming into their State.

This decision strengthens the concept of sovereignty in that it upholds the supreme sovereign power of a State within its own territorial limits.

The concept of sovereign immunity has been much criticized as having no place in our society today. Care must be taken to clearly and distinctly define the scope of immunity and not to blindly expand the application of the doctrine. In the field of international law this Court has followed a course of limiting rather than expanding the doctrine of immunity. A ruling by this Court upholding the decision of the California court in this case will confirm the long standing rule of law that the sovereign powers of a State do not extend beyond its territorial limits and

that since immunity is an attribute of sovereignty there can be no immunity unless there is a clear showing of the existence of sovereign power.

The record is also clear that the State of Nevada consented to the jurisdiction of the California courts by the operation of a motor vehicle in the State, by waiving in open court any immunity from suit in the California court and the personal jurisdiction obtained over their agent.

This Court should affirm the judgment in this case.

Dated: August 11, 1978.

Respectfully submitted,

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